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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA, et al., Case No. 6:15-cv-01517-AA
Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,
Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY *BARKE*
*V. BANKS***

(ECF No. 524)

Plaintiffs filed a notice of supplemental authority in which they discuss the Ninth Circuit's decision in *Barke v. Banks*, 25 F.4th 714, 2022 WL 351239 (9th Cir. Feb. 7, 2022). Pls.' Notice of Suppl. Auth., ECF No. 524 ("Pls.' Notice"). Relying on *Barke*, Plaintiffs argue that when a district court dismisses a case for lack of Article III jurisdiction, (1) it "*must be* entered without prejudice," and (2) Plaintiffs should be given an opportunity to file an amended complaint "to correct . . . deficiencies to their complaint" so long as the "amendment is not

futile.” Pls.’ Notice 2 (emphasis in original). As already noted in Federal Defendants’ opposition to Plaintiffs’ motion for leave to amend, however, Plaintiffs’ proposed amendment is indeed futile and should be denied.

In *Barke*, the district court dismissed a First Amendment challenge by local government officials for lack of standing, and denied the plaintiffs leave to amend. *Barke*, 2022 WL at *4, 6. The Ninth Circuit upheld this decision because the plaintiffs had failed to demonstrate that they could cure their standing deficiencies in an amended complaint. *Id.* at *6. The Ninth Circuit reversed only the part of the district court’s judgment that purported to dismiss the case with prejudice, on grounds that a court “is powerless to reach the merits” when it lacks jurisdiction over the claims. *Id.* (quoting *Fleck & Assocs., Inc. v. Phoenix, City of, an Ariz. Mun. Corp.*, 471 F.3d 1100, 1106 (9th Cir. 2006)).

Barke supports the Federal Defendants’ opposition to Plaintiffs’ motion to amend. As in *Barke*, Plaintiffs’ proposed amendment is futile. The Ninth Circuit has made clear that the jurisdictional deficiencies it identified in Plaintiffs’ complaint cannot be cured by amendment because no plausible injunction capable of remedying the claims is within the powers of a district court, and a declaratory judgment would not redress Plaintiffs’ alleged injuries. *See Juliana v. United States*, 947 F.3d 1159, 1170-71 (9th Cir. 2020) (recognizing that Plaintiffs sought both injunctive and declaratory relief, and concluding that any conceivable remedy to Plaintiffs’ claims would necessarily put the court in the position of passing on a “host of complex policy decisions entrusted . . . to the wisdom and discretion of the executive and legislative branches”). As in *Barke*, Plaintiffs’ motion for leave to amend should thus be denied.

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